

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 5092 of 2002

Date of decision: -12-2006

Sham Lal

.....Petitioner

Versus

Raj Kumar

.....Respondent

CORAM: Hon'ble Mr.Justice Vinod K.Sharma.

**Present: Mr.K.S.Dadwal, Advocate, for the petitioner.
Mr. H.S.Aurora, Advocate, for the respondent.**

VINOD K.SHARMA,J.

The landlord petitioner by way of present revision petitioner has challenged the orders passed by the learned Rent Controller as well as by the Appellate Authority dismissing the petition filed by him under Section 13 of the East Punjab Urban Rent Restriction Act (for short the 'Act') seeking eviction of the respondent-tenant.

The petitioner sought eviction of the respondent-tenant on the ground that the respondent was a tenant in the shop in dispute on a monthly rent of Rs. 125/- It was claimed that the respondent was in arrears of rent and the petitioner required the shop in dispute for his personal use and occupation. It was further claimed that the petitioner did not own or possess any other shop within the Municipal limits of

Civil Revision No.5092 of 2002

Hoshiarpur nor he has vacated any shop after the commencement of the Act. It was also claimed that the petitioner was running business of Bardana in a rented shop at New Sabzi Mandi, Hoshiarpur where he was paying a monthly rent of Rs. 1050/- It is also averred that as per stipulation in the agreement the rent is required to be increased by Rs. 25/- per year. It was further claimed that the shop in dispute is old one and is unfit for human habitation. The whole of the roof is leaking and cracks have developed. It was also claimed that the shop requires reconstruction from top to bottom and the petitioner wants to run his business after reconstruction of the demised shop.

The petition was contested by the respondent-tenant in which a preliminary objection was taken to the effect that the site plan attached with the petition was incorrect. However the relationship of the landlord and tenant was admitted. It was also admitted that the rent of the shop in dispute was Rs. 125/- It was claimed that a sum of Rs. 625/- was deposited as rent w.e.f. 1-4-1998 to 31-8-1998. It was denied that the shop was required for personal requirement. The stand of the respondent-tenant was that the petitioner was running bardana store at New Sabzi Mandi, Hoshiarpur, which was very suitable place for his business. It was also claimed that the shop was in good condition. The stand of the respondent-tenant was that a case under Section 12 of the Act was filed for repair of the tiles in which the petitioner had taken a stand that the shop was in a good condition.

After filing of the replication, the learned Rent controller

Civil Revision No.5092 of 2002

was pleased to frame the following issues:-

- “1. Whether the respondent is liable to be evicted from the demised premises on the ground of non-payment of rent, as alleged. ? OPA
2. Whether the applicant requires the shop in question for his personal use and occupation. ?OPA
3. Whether the demised premises have become unfit and unsafe for human habitation. ?OPA
4. Whether the application is not maintainable in the present form. ?OPA.
5. Whether the site plan attached by the applicant with this application is not correct.? OPR
6. Relief.”

In support of the allegations, the petitioner appeared in the witness box as AW-1 and also examined Shri G.S. Counsel AW-2, Building Expert. He also produced Shri Avtar Kishan, landlord of the shop, situated in Sabzi Mandi, Hoshiarpur where the petitioner was presently running his business of bardana. On the other hand, the respondent examined Constable Nirmal Singh, RW-1 to prove reports No. 19 and 30 dated 30-6-1999. Ms. Madhu Saini, Advocate, was appointed as a Local commissioner in the civil suit instituted by the respondent and her report was produced as Exhibit R-3. Deepak Suri, RW-3, Clerk in the Punjab State Electricity Board, proved the release of commercial electric connection in the name of the wife of the

Civil Revision No.5092 of 2002

petitioner in the shops of New Sabzi Mandi, Hoshiarpur. He also produced Gurdip Singh, RW-4 and Vijay Bagga, RW-5, a building expert. He also produced Mohinder Singh, RW-6, who was running his business near the shop in dispute. Besides this, the respondent-tenant appeared as RW-7.

In view of the acceptance of rent in the Court, issue No.1 was decided against the petitioner-landlord. On issue No.2, the learned Rent Controller came to the conclusion that the petitioner was running the business of Bardana dealing in empty bags of jute which had good potential in the area of Sabzi Mandi, whereas the shop sought to be evicted is situated in the market where shops of auto repairs, spare parts, watch, tea stalls etc. are located. Thus his need could not be said to be bona fide. The reason for coming to this conclusion was that the petitioner had nowhere stated that he wants to start a new business in the demised shop. It was also noticed that the landlord and his wife acquired other shops in the New Sabzi Mandi and, therefore, it could not be said that need of the landlord was bona fide. The plea raised by the petitioner that his landlord was pressing hard for vacation of the shop in his occupation was rejected for want of pleading in the application. It was also noticed that the case set up by the petitioner was that he was required to pay enhanced rent of Rs. 25/- every year for the shop in his occupation, but no finding qua this was recorded and accordingly issue No.2 was decided against the petitioner. Issue No.3 was also decided against the petitioner. However, issue No. 4

Civil Revision No.5092 of 2002

was decided against the respondent-tenant. Similarly issue No.5 was decided in favour of the petitioner. In view of the findings recorded by the learned Rent Controller on issues No. 1 to 3, rent petition was dismissed.

The learned Appellate Authority also decided issue No.2 against the petitioner by taking note of the fact that no petition was filed by the landlord of the petitioner for his eviction and, therefore, it could not be said that he was under the threat of eviction. It was also noticed that the wife of the petitioner had purchased two shops in Sabzi Mandi. As the wife has no separate entity from her husband, therefore, the need of petitioner could not be said to be bona fide and accordingly rejected the appeal.

Mr. K.S. Dadwal, learned counsel for the petitioner has challenged the findings of the learned Courts below only on issue No.2. The contention of the learned counsel for the petitioner is that once the petitioner had set up his case that he required the demised premises to carry on his independent business, he was not required to express the business which he wanted to set up in the demised shop. Learned counsel for the petitioner submitted that mere purchase of plot by the wife of the petitioner did not disentitle him to get the demised shop vacated. It was claimed by the learned counsel that the landlord is the best judge of his need and it was not for the tenant or the rent Controller to see as to where he had the potential to run his business.

Civil Revision No.5092 of 2002

Learned counsel for the petitioner further contended that there was an element of need as the petitioner was paying more rent for the rented accommodation and was fetching less rent of the accommodation of which he was a landlord. The contention of the learned counsel was that the petitioner was admittedly paying Rs. 1050/- per month with the increase of Rs. 25/- per year whereas he was getting a rent of RS. 125/-per month only. In support of this contention, learned counsel for the petitioner placed reliance on the judgments of this Court in the cases of **Bhagwati Parshad Vs. Parkash Chand, 1987 (1) RCR 360, Ram Rakha Vs. Bal Mukand, 1986 (1) RCR 208 and Hakam Rai Vs. Chhail Bihari Lal, 1978 (1) RCR 591.**

Learned counsel for the petitioner, thereafter, contended that it was open to the petitioner to seek eviction of the tenant even if the landlord has the other shops as the rent of the shop in his occupation was exorbitant. In support of this contention, he placed reliance on the judgment of the Hon'ble Allahabad High Court in the case of **Pardeep Kumar Rastogi Vs. XVI Addl. District Judge, Meerut, 2001 (2) RCR (Rent) 50.**

The next contention of the learned counsel for the petitioner was that the learned Courts below were not right in coming to the conclusion that as no eviction petition has been filed by the landlord of the petitioner, his need could not be said to be bona fide. Learned counsel for the petitioner by placing reliance on the judgment

Civil Revision No.5092 of 2002

of the Hon'ble Karnataka High Court in the case of **S. Narahari Vs. Smt. S. Pankaja, 2001 (2) RCR 422** contended that filing of eviction petition by landlord of petitioner was not necessary as he had claimed possession from petitioner.

Learned counsel for the petitioner also contended that the findings of the rent Controller as well as the Appellate Authority suggesting that the potential of business of the petitioner was better in New Sabzi Mandi, are perverse and contrary to the settled law that the landlord is the best judge of his need. In support of this contention, he placed reliance on the judgment of this Court in the case of **Mrs. Ranbir Kaur Vs. Sheetal Parkash, 1986 (1) RCR 266** and the judgment of the Hon'ble Supreme Court in the cases **reported as R.C.Tamarkar and another Vs. Nidhi Lekha, 2001 (2) RCR 511 and Meenal Eknath Kshirsgar Vs. M/S Traders Agencies, 1996 (2) RCR 233.**

On the other hand, H.S.Aurora, learned counsel appearing on behalf of the respondent, argued that the concurrent findings of fact recorded by the learned Courts below were not open to challenge by way of revisional jurisdiction.

Learned counsel for the respondent placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Baldev Singh Bajwa Vs. Monish Saini, AIR 2006 SC. 59** to contend that the land has to establish the need to be genuine and not a pretext to get accommodation vacated. The contention of the learned counsel for the

Civil Revision No.5092 of 2002

respondent was that the plea of the landlord cannot be taken as a gospel truth.

I have heard the learned counsel for the parties and find that it is always open to the revisional Court to interfere with the findings recorded by the learned Courts below if they misconstrue the word “require”. In case the findings are vitiated by error of law, the same can be corrected as has been held by the Hon'ble Supreme Court in the cases of **Phiroze Bamanji Desai Vs. Chandrakant M. Patel and others, AIR 1974 SC 1050** and **Deena Nath Vs. Pooran Lal, 2001 (2) RCR 130**. The judgments relied upon by the learned counsel for the respondent are of no help to the respondent as in the case of **Baldev Singh Bajwa (supra)**, the Hon'ble Supreme Court has been pleased to hold that the tenant has to prove by way of cogent evidence that the need of the landlord was not bona fide. Be that as it may, once it is not disputed that the petitioner is a tenant in the premises where he is paying exorbitant rent, in that event, it is always open to the petitioner to seek eviction of the tenant for his own use and need is to be held as bona fide. The mere fact that the wife of the petitioner is in possession of some shops could not be a ground to reject the claim of the petitioner as it was for the petitioner to see as to where he was supposed to run his business. It is settled law that the landlord is the best judge of his need and choice and cannot be dictated by the tenant as to where he should run his business.

In view of what has been stated and discussed above, the

Civil Revision No.5092 of 2002

findings of the learned Courts below on issue No.2 are reversed and it is held that the shop in dispute is a bona fide requirement of the petitioner for his own use and occupation. Accordingly, the present revision petition is allowed, the impugned orders are set aside and the rent petition filed by the petitioner under Section 13 of the Act is allowed. No costs.

December ,2006
'dls'

(VINOD K.SHARMA)
JUDGE

Civil Revision No.5092 of 2002